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# **Algonquin Valley Branch**

## **Lunch and Learn Workshops**



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**So You Want to be an Executor!**

# Lunch and Learn Workshop Series

## A Presentation of the Responsibilities and Duties of an Executor

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# Disclaimer

This presentation provides information about executor duties.

The information should not be construed as providing specific legal or financial advice.

Use of any information acquired from this presentation is voluntary.

Always obtain a qualified assessment of the accuracy and timeliness of information by consulting legal and/or financial advisors.

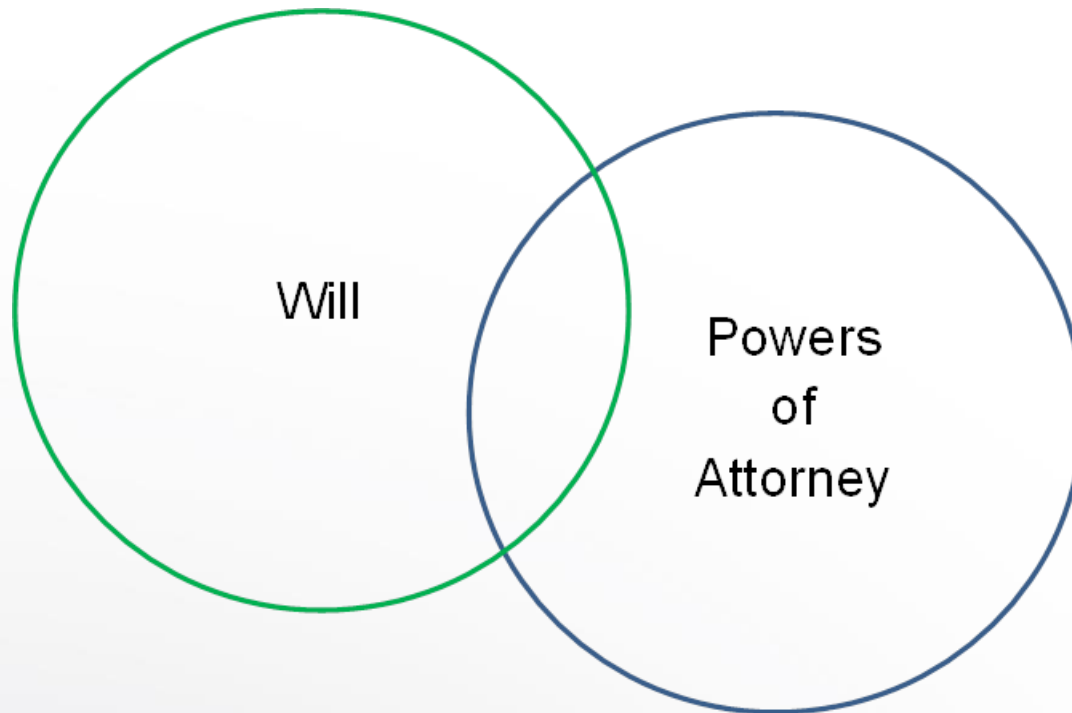
# What is to be covered in this workshop?

- Explain the key responsibilities of an executor.
- Provide an understanding of the duties expected of an executor
- Review tasks required by an executor to close an estate
- Consider actions to make your executor's tasks easier to accomplish
- Examine probate reduction strategies

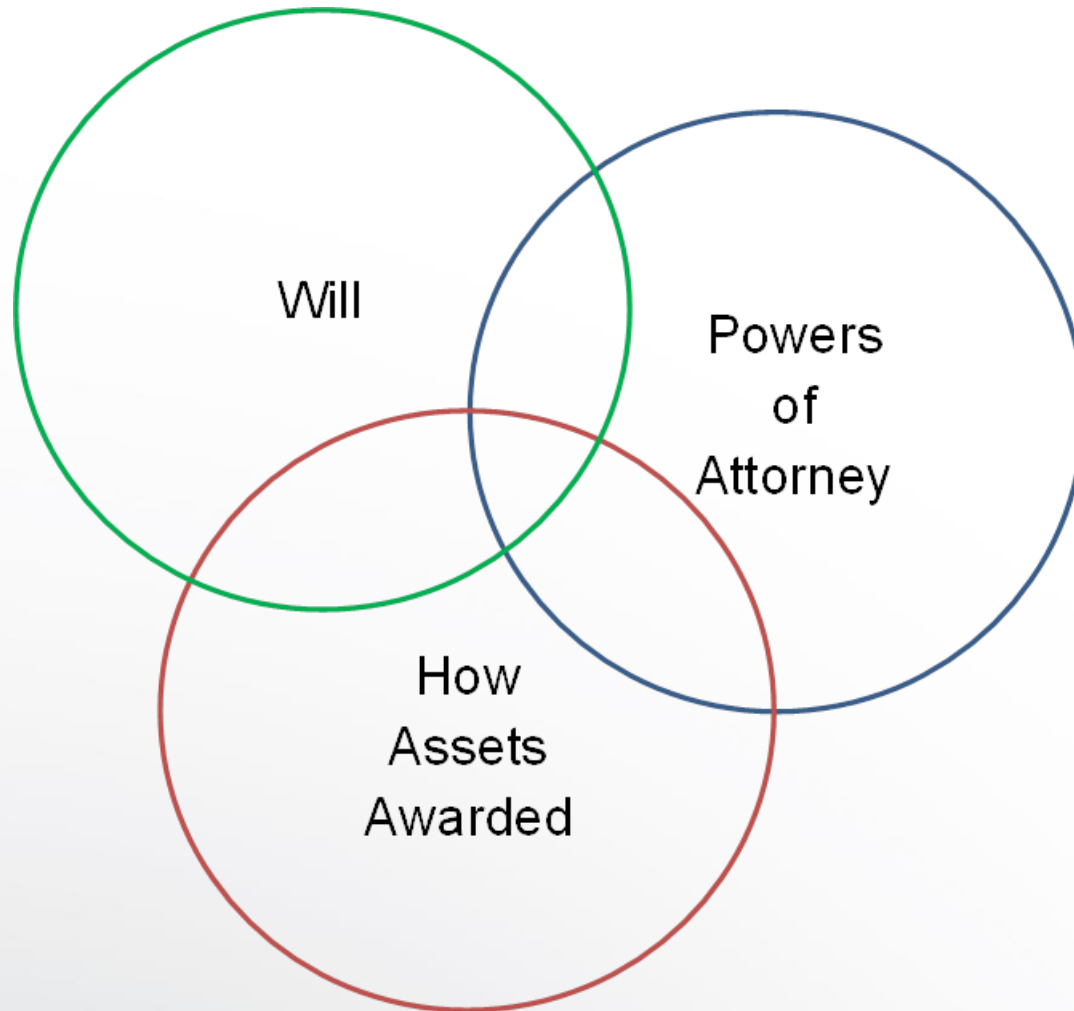
# Estate Planning



# Estate Planning

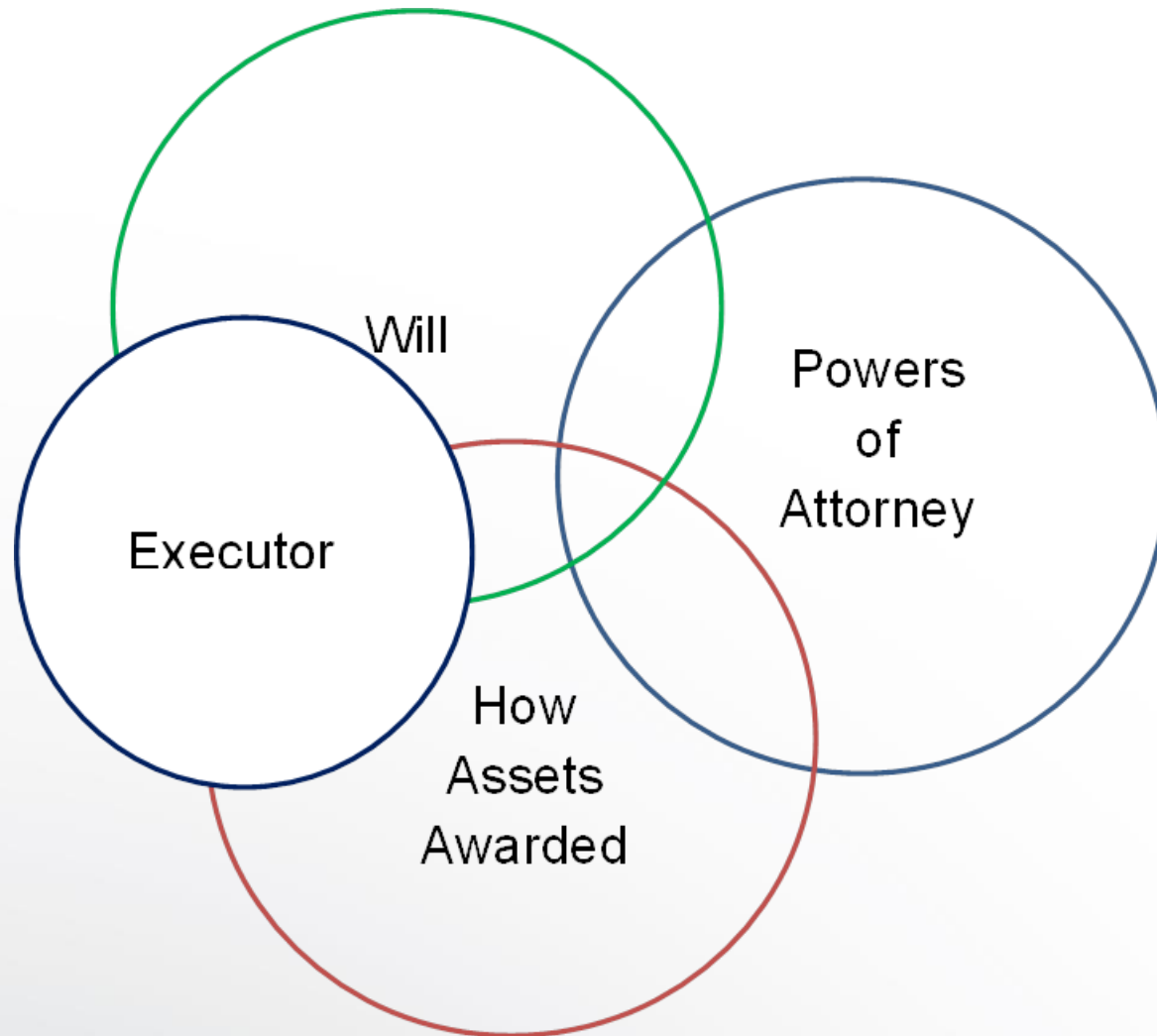


# Estate Planning

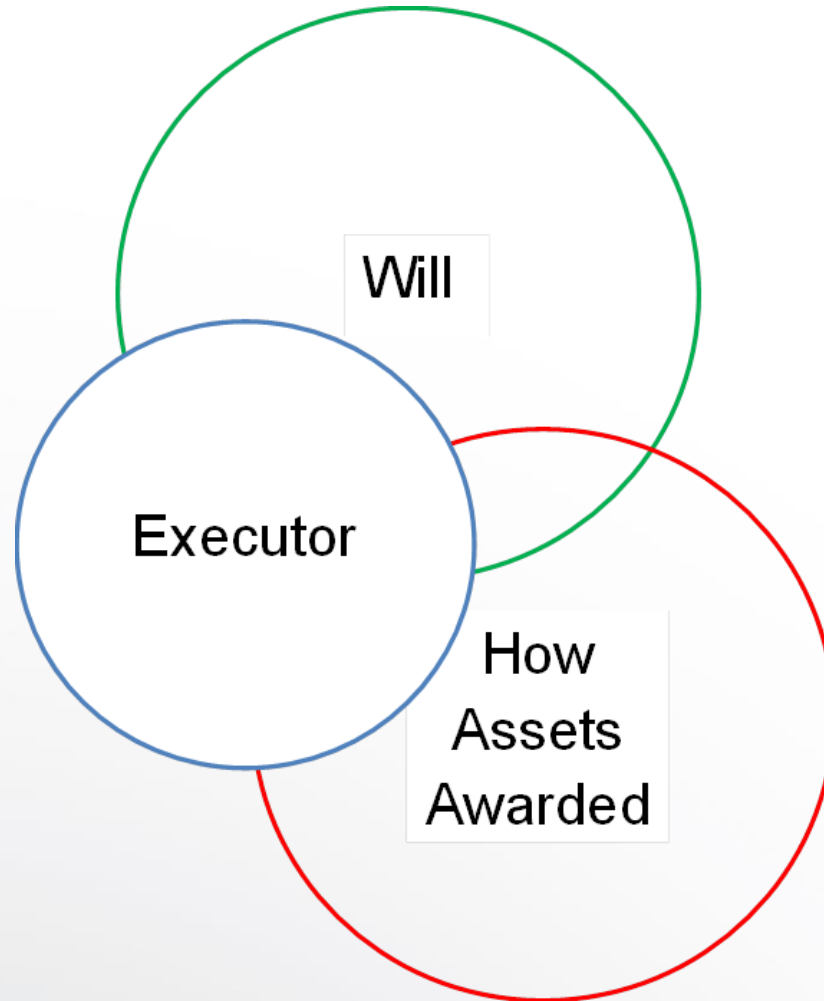




# Estate Planning



# Estate Planning



# What is an Executor?

- In Ontario an executor is called an personal representative or estate trustee.
- An executor is responsible for settling an estate according to the deceased's wishes while complying with provincial laws.

# Issues to Consider as an Executor

- Family dynamics may be complex
- Time constraints may be present
- Lack of expertise
- Living outside Ontario or Canada
- Personal liability

# The Executor Role

- Large responsibility
- Can be time consuming
- Must have and exercise business judgement
- May deal with emotions and/or mediate conflict
- May have to settle a complex estate

# Executor Responsibilities

- Deal with immediate issues
- Make preliminary arrangements
- Secure the assets
- Value the estate
- Pay debts, resolve tax issues
- Carry out administration
- Distribute the estate

# Carrying Out the Role of an Executor

If you have been appointed executor and cannot or do not want to carry out all the duties involved in administering the estate, you have the right to decline to act before you commence this task.

# Carrying Out the Role of an Executor

You can engage a trusted provider at any point during the estate's administration to help you with any or all of your responsibilities as executor.



## With Whom do Executors most commonly deal?

Almost any person, company or institution that has a vested legal or financial interest in the estate such as:

Beneficiaries, investment companies, lawyers/notaries, the Canada Revenue Agency, accountants, insurance companies, government pension departments, stockbrokers, mortgage lenders, auctioneers, financial institutions, real estate agents, business partners

# Typical duties of an Executor

- Meet beneficiaries to set expectations and give them an overview of the process
- Arrange funeral, memorial, cremation or burial as required
- Locate and prepare a detailed inventory of assets
- Review insurance coverage for the assets

# Typical duties of an Executor

- Arrange for the residence to be emptied, cleaned, locks to be changed and if required the property to be sold
- Find, review and file claims for life insurance and pension benefits
- Prepare and file up to five separate income tax returns

# Typical duties of an Executor

- Determine if an RRSP contribution should be made to reduce taxes, or to transfer assets
- Locate missing beneficiaries
- Pay legacies and other bequests
- Distribute the residue of the estate

# Typical duties of an Executor

The devil is in the details,

So let's dig in

# Typical duties of an Executor

The following tasks are not necessarily sequential; we also do not claim them to be all inclusive; it depends!

# Preliminary Steps



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# Step-by-Step Process to Settling an Estate

1. Locate the most recent will and review it for specific instructions concerning the funeral



# No Will

What if there is no Will?

Creates problems for those you  
leave behind.

# No Will

- 1) Your property will be divided according to the law, which may not be the same as how you would have divided it.
- 2) There will be extra time delays and expenses involved in wrapping up your affairs, and
- 3) The court will have to appoint someone to act as your personal representative; usually closest relative.

# No Will

## As executor

- You can apply to the court to be appointed as the administrator
- You can ask the court to appoint another person or a corporate executor to handle all the administration

# No Will

Ontario *Succession Law Reform Act*  
governs how your property will be  
distributed

# No Will

- 1) **If you have a spouse, but no children**, your spouse inherits everything. Common-law spouses do not automatically inherit everything.
- 2) **If you have a spouse and children**, your spouse first takes a *preferential share* up-to \$200,000 worth of assets. Of the residue, 1/2 each for one child; or 1/3 to spouse and rest divided equally among all children

# No Will

- 3) **If you have children, but no spouse,** then the children each inherit an equal portion of your estate.
- 4) **If you have no spouse and no children,** your parents inherit your entire estate.
- 5) **If you have no spouse, no children, and no parents,** your brothers and sisters divide your estate equally.

# No Will

- 6) **If you also have no brothers and sisters,** then your nieces and nephews each inherit an equal portion of your estate.
- 7) **If you have no nieces and nephews,** then all other next of kin inherit an equal portion of your estate, and
- 8) **If you have no living next of kin,** then your estate goes to the Ontario government.

# Step-by-Step Process to Settling an Estate

2. Make or assist with funeral arrangements

What if no wishes communicated?



# Step-by-Step Process to Settling an Estate

## 2. Make or assist with funeral arrangements

- Contact the funeral home
- Prepare and publish obituary
- Plan the service

# Step-by-Step Process to Settling an Estate

3. Determine the complexity of the will.

- Is it beyond your expertise?
- Are there conflicts?
- To be validated by court?

# Complex Estate

May need to think about  
executor insurance as you will held  
liable for errors and omissions

# Step-by-Step Process to Settling an Estate

4. Obtain multiple original copies of the proof-of death certificate

# Step-by-Step Process to Settling an Estate

5. Ensure the family's immediate financial needs are met

# Step-by-Step Process to Settling an Estate

6. Review any marriage contracts, family law, or dependent relief issues

# Step-by-Step Process to Settling an Estate

7. Determine if Probate required

# Step-by-Step Process to Settling an Estate

7. Determine if Probate required
  - Courts acknowledge will
    - Confirms authority of executor
    - Most institutions require probate before they will release funds



# Step-by-Step Process to Settling an Estate

8. Probate the Will; arrange necessary court application for Letter of Probate

# Probate

When an executor applies to the court for a *Certificate of Appointment of an Estate with a Will*, probate taxes have to be paid

# Probate

Estate Administration Act  
(January 2015)

# Estate Administration Tax

- Probate Tax is imposed on the assets of the estate of the deceased person
- Probate Tax is paid as a deposit when the estate trustee applies for the Certificate of Appointment of the Estate Trustee with Superior Court of Justice

# Estate Administration Tax

- Estate information must be received by Ministry of Finance within 90 days following issuance of the Certificate of Appointment of Estate Trustee

# Estate Administration Tax

Probate Tax is based on the value of the estate assets

- Real estate in Ontario (less encumbrances)
- Investments (stocks, bonds, trust units, etc.)
- Vehicles and Vessels (cars, trucks, boats, ATVs, motorcycles, snowmobiles)

*plus*

# Estate Administration Tax

Probate Tax is based on the value of the estate assets

- All property held in another person's name
- All other property wherever situated including: goods, intangible property, business interests, and insurance proceeds (if no named beneficiary)

# Estate Administration Tax

Probate Tax imposed is

\$5 for each \$1000 or part thereof on the first \$50,000 of the estate

\$15 for each \$1000 or part thereof on the remainder of the estate exceeding \$50,000

As executor you must find the funds to pay the tax  
WHEN you submit the estate to probate



# Estate Administration Tax

Probate Tax for a \$250,000 estate

- on the first \$50,000 of the estate -> \$250

$$(\$50000/\$1000 \times \$5)$$

- on the remaining \$200,000 -> \$3000

$$(\$200000/\$1000 \times \$15)$$

Total probate tax = \$3250

# Estate Administration Tax

Probate Tax for a \$500,000 estate

- on the first \$50,000 of the estate -> \$250

$$(\$50000/\$1000 \times \$5)$$

- on the remaining \$450,000 -> \$6750

$$(\$450000/\$1000 \times \$15)$$

Total probate tax = \$7000

# Beneficiary Relationships



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# Step-by-Step Process to Settling an Estate

10. Communicate directly with Beneficiaries to set expectations and to provide copy or part of will

- Settling an estate can create conflict between beneficiaries who are under emotional stress.
- As executor, it's important to communicate effectively with beneficiaries

# Communications

- Best if it is face-to-face meeting
- Arrange a meeting to discuss your duties and obligations to them and set expectations
- Outline the process you will follow in settling the estate.

# Beneficiaries want to know

- The executor has done his or her job properly
- The debts and taxes of the estate have been paid
- Reasonable funeral expenses have been paid
- The estate accounts and investments are earning a reasonable return

# Beneficiaries want to know

- The executor has distributed the personal property to the designated people
- The remainder of the estate is being distributed according to the terms of the Will
- What fees the executor will receive for his or her work in administering the estate

# Avoiding Conflict over Fees

As executor, you are entitled to charge a fee for administering the estate.

- The fee is payable out of the estate, and details of the executor's fee should be included in the estate accounts.
- By stating expectations up front, may avoid conflict or misunderstanding over fees



# Step-by-Step Process to Settling an Estate

11. Provide regular updates to beneficiaries on administration status

# Avoiding Conflicts

- Communicate on a regular basis
- Give the beneficiaries opportunity to voice concerns
- Good communication may prevent the stress and legal costs of having to present the accounts for court approval.
- If regular meetings are not practical, send regular written updates and express what your next steps will be.

# Step-by-Step Process to Settling an Estate

12. Provide a copy of the estate summary to primary beneficiaries

# Beneficiaries

1. Primary Beneficiaries
2. Alternate Beneficiaries
3. Beneficiaries of Shared Gifts
4. Residuary Beneficiaries
5. Alternate Residuary Beneficiaries

# Step-by-Step Process to Settling an Estate

13. Communicate the distribution process with residuary beneficiaries

# Safeguard the Estate Assets



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# Step-by-Step Process to Settling an Estate

14. If deceased was a sole proprietor/owner arrange for business to continue

# Step-by-Step Process to Settling an Estate

15. Secure all the business and personal physical assets and documents



# Step-by-Step Process to Settling an Estate

16. If the deceased's home will be vacant, advise the police and insurance company. Need to check property frequently.

# Step-by-Step Process to Settling an Estate

17. Verify there is adequate insurance to protect assets

# Step-by-Step Process to Settling an Estate

18. Notify the banks and financial institutions where accounts are held

# Step-by-Step Process to Settling an Estate

19. Cancel all credit cards; return cards to issuers

# Step-by-Step Process to Settling an Estate

20. Locate and take inventory of safety deposit box(es)

# Step-by-Step Process to Settling an Estate

21. Open an estate account to transfer balances, make deposits and pay expenses.

- Close the accounts once transfers complete

# Valuing the Estate



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# Step-by-Step Process to Settling an Estate

22. Locate all original investment certificates from files and safety deposit box(es)



# Step-by-Step Process to Settling an Estate

23. Identify, value and record estate assets as of the time of death

# Step-by-Step Process to Settling an Estate

24. Identify, get access and take inventory of digital accounts and assets

# Step-by-Step Process to Settling an Estate

25. Determine what access rights can be passed on and their value

# Step-by-Step Process to Settling an Estate

26. Determine if personal information should be protected to preserve the privacy of the deceased

# Step-by-Step Process to Settling an Estate

27. Investigate all debts and liabilities owed by the deceased.

# Step-by-Step Process to Settling an Estate

28. Prepare a list of assets and liabilities.

- If debts/liabilities exceed assets, obtain professional advice.

# Step-by-Step Process to Settling an Estate

29. Apply and collect CPP death benefit.

# Step-by-Step Process to Settling an Estate

30. Contact the Pension Office regarding pension and death benefits.

- Contact information is provided in one of the handouts



# Step-by-Step Process to Settling an Estate

31. Apply and collect life insurance and other insurance benefits

# Step-by-Step Process to Settling an Estate

32. Determine estate entitlements and liabilities of any business relationships.

# Step-by-Step Process to Settling an Estate

33. Determine if RRSPs, RRIFs are to be rolled over to beneficiaries.

# Step-by-Step Process to Settling an Estate

34. If deceased was part to any legal proceedings or if the cause of death gives rise to any legal claim or liability, retain and instruct counsel.

# Step-by-Step Process to Settling an Estate

35. If deceased was a capital beneficiary of an estate or trust not yet distributed, advise executor/trustee of deceased's death and establish outstanding entitlements.

# Step-by-Step Process to Settling an Estate

36. If deceased was executor or co-executor of an estate not yet closed, advise co-executor, beneficiaries; seek legal advice about your responsibilities

# Administering the Estate



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# Step-by-Step Process to Settling an Estate

37. Redirect mail to your address



# Step-by-Step Process to Settling an Estate

38. Review the suitability of investments and recommend sale to meet cash needs

# Step-by-Step Process to Settling an Estate

39. Invest any surplus cash, selecting prudent investments

# Step-by-Step Process to Settling an Estate

40. Assist in establishing any trusts stipulated in the will

# Step-by-Step Process to Settling an Estate

41. Cancel leases, clear and close safety deposit boxes

# Step-by-Step Process to Settling an Estate

42. Cancel CPP, OAS benefits

# Step-by-Step Process to Settling an Estate

43. Apply for CPP Survivor's pension and/or children's benefits

# Step-by-Step Process to Settling an Estate

44. Advise the CRA to discontinue or transfer GST credits and child tax benefits

# Step-by-Step Process to Settling an Estate

45. Complete documentation and transfer pension and health/dental benefits



# Step-by-Step Process to Settling an Estate

46. Return SIN card, passport, driver's license, health card.

# Step-by-Step Process to Settling an Estate

47. Refund expenses for funeral, and/or other major costs associated with settling the estate.

# Step-by-Step Process to Settling an Estate

## 48. Complete various housekeeping tasks

- Close subscriptions
- Cancel club/professional memberships
- Request refunds due

# Step-by-Step Process to Settling an Estate

49. Advertise for estate creditors

# Step-by-Step Process to Settling an Estate

50. Pay balances on credit cards, lines of credit, utility accounts, money owing other creditors

# Step-by-Step Process to Settling an Estate

51. Pay all debts and settle all legitimate claims.

# Taxes



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# Step-by-Step Process to Settling an Estate

52. Obtain a copy of the last tax return filed by the deceased.



# Step-by-Step Process to Settling an Estate

53. Determine the adjusted cost base for tax purposes of each capital property.

# Step-by-Step Process to Settling an Estate

54. Determine deceased's income for the year until date of death.

# Step-by-Step Process to Settling an Estate

55. Tax liability of RRSPs and RRIFs passing to beneficiaries other than spouse.

- Beneficiaries receive after tax value of the tax-deferred instrument; estate to pay the income tax owing.

# Step-by-Step Process to Settling an Estate

56. Complete and file all outstanding tax returns; pay any required income taxes.

# Step-by-Step Process to Settling an Estate

57. Obtain tax clearance certificate from CRA after Notice of Assessment received.

# Distribution



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# Step-by-Step Process to Settling an Estate

58. Ensure time has expired for dependents to make claim for support or spouse to make a claim for division of matrimonial property; or the claims are resolved.

# Step-by-Step Process to Settling an Estate

59. Initiate sale of assets and transfer of titles.



# Step-by-Step Process to Settling an Estate

60. Begin distributing assets to beneficiaries according to the terms of the will.

# Step-by-Step Process to Settling an Estate

61. Distribute specific bequests, obtain receipts.

# Step-by-Step Process to Settling an Estate

62. Prepare your compensation as executor.

- Entitled to 5% of estate value
- Now this will be considered a taxable income; may wish to explore with testator the idea of receiving a gift defined in the will in lieu of fees.

# Step-by-Step Process to Settling an Estate

63. Pay all legal fees; pay fees related to handling estate issues.

# Step-by-Step Process to Settling an Estate

64. Arrange for final distribution of remaining assets.

# Step-by-Step Process to Settling an Estate

65. Prepare a final accounting of all assets, debts, liabilities, expenses and distribution of assets.

# Step-by-Step Process to Settling an Estate

66. Have each adult beneficiary approve the final report and sign a release.

# Step-by-Step Process to Settling an Estate

67. Advise bank in writing to close the estate account, once the estate is settled.



# Step-by-Step Process to Settling an Estate

68. Advise beneficiaries to consult with a financial advisor.

# Engaging Your Executor



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# Things to Do to Assist your Executor

Basically you need to answer questions now before you are not here to answer them!

If you really love your family take the time now to get organized so you do not leave them with a big mess to sort later.

# Things to Do to Assist your Executor

Manage your affairs intelligently:

- Consolidate accounts
- Review financial statements with executor
- Hire a financial planner

# Things to Do to Assist your Executor

Manage your affairs intelligently:

- Review your estate plan
- Prepare a financial data organizer
- Utilize the “You and Your Survivors Workbook”

# Things to Do to Assist your Executor

Manage your affairs intelligently:

- Make sure your will is up to date
- Make sure you have designated beneficiaries
- Evaluate impact of probate

# Evaluate Impact of Probate

Is paying probate really a problem?

Probate is required by third parties to ensure the executor has the authority.

Do the costs and consequences to reduce probate outweigh the savings years later at your death?

# Evaluate Impact of Probate

Please note: if you consider actions to reduce probate, you may also trigger capital gains tax now.

- e.g., gifting recreational property to children –
- **now** – you pay capital gains tax
  - **after your death** – estate pays capital gains tax ( + **asset becomes part of probate value!!**)



# Evaluate Impact of Probate

Possible probate reduction strategies:

- Consider gifting assets before death
- Consider living/family trusts
- Consider joint tenancy with right of survivorship (JTWROS) NOT joint tenants-in-common

# Evaluate Impact of Probate

## Joint tenancy issues:

- Debt
- Divorce
- Drugs
- Death

If just for convenience, consider POA

# Evaluate Impact of Probate

Other probate reduction strategies:

- Consider life insurance products
  - Whole life insurance
  - Segregated funds

# Evaluate Impact of Probate

Other probate reduction strategies:

- Consider titling assets to a limited company as debts are not subtracted from assets to determine estate value

# Evaluate Impact of Probate

- Consider making two wills: primary for assets subject to probate; secondary for distribution direction of other assets.
  - Ensure that one will does not accidentally revoke the other.
  - Ensure that the will for probate meets provincial requirements.

# Things to Do to Assist your Executor

- Spend some quality time with your executor to make sure all your wishes will be addressed.
- Have the following key documents safely stored together in a place where they can be easily found:

# Key Documents

- Your Will
- Your Living Will
- Your Power of Attorney
- Proof of Ownership (house, land, vehicles, stocks, or other assets)

# Key Documents

- Six years or more of tax returns
- A list of bank accounts, safety deposit boxes
- Stock certificates and savings bonds
- Pension retirement and annuity documents



# Key Documents

- Insurance policies
- A list of your debts and loans
- Marriage licence (and/or divorce papers)
- Canadian immigration papers

# Key Documents

- Your user names and passwords for your on-line accounts
- Your funeral arrangements

Taking action and doing these tasks will get you well on your way to having an orderly estate

# Summary



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# Summary

Hopefully this workshop has:

- Explained the key responsibilities of an executor.
- Provided an understanding of the duties expected of an executor
- Reviewed the major tasks required by an executor to close an estate
- Given you some guidance to assist your executor to close your estate

# Summary

**Make it so!**

Jean-Luc Picard – Commander, Starship Enterprise D



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**Thank you for your participation today!**